

more. Indeed I would prefer to cancel the whole matter than give another cent's security. It is enough in all conscience, and I can give no more than I have already. The terms shall be adhered to by me, so far as possible, and I, at present, see nothing to make me doubt of a strict compliance on my part. Should you think proper to confide the papers to my care, to have them recorded, I will send you the necessary certificate of the clerk. In the meantime, I hope you will send me Mr. Albert's receipt that all is right, for I prefer that, and the recording of the mortgage, should go together at least."

That the contract was not complete when this letter was written, is very apparent. Terms had been proposed with which Mr. Dall would not comply, preferring even the cancellation of the entire arrangement.

The last letter is dated the 13th of December, 1845, and is from Schley to Dall. In it, he acknowledges the receipt of a letter from Dall to him, which is not filed, but in which it is manifest from the letter of Schley, Mr. Dall proposed to see him in person, and then after some matters which are not deemed material, he says, "If the object of your visit is to have the whole arrangement cancelled, I shall be very willing to accede to such a course, being heartily desirous to resign the appointment, and which the Chancellor has informally told me he would accept. As soon as I had closed the loan to you, I intended to apply to him to be released. The bond you executed to me and the mortgage are still in my possession, and if the arrangement is cancelled, I am prepared to surrender them to you."

The statement of facts which has been already referred to, shows that the mortgage was on or about the 1st of January, 1846, returned by Schley to Dall, and by the latter destroyed. Now, taking all this correspondence into view, coupled with the fact of the actual surrender to and cancellation of the mortgage by the mortgagor, and I cannot well understand upon what ground it can be contended, that the complainants have succeeded in showing a consummate and binding agreement for a mortgage, which shall be enforced as against creditors and purchasers.